

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

SEAN DAVID COTTLE,

Plaintiff,

v.

NEVADA DEPARTMENT OF
CORRECTIONS, et al,

Defendants.

Case No. 3:12-cv-00645-MMD-WGC

ORDER

Before the Court is Magistrate Judge William J. Cobb's Report and Recommendation ("R&R") (dkt. no. 68) recommending that the Court: (1) grant in part and deny in part Plaintiff Sean David Cottle's motion for leave to amend (dkt. no. 57); (2) grant Plaintiff's motion to attach exhibits from the original complaint to the amended complaint (dkt. no. 58); and (3) grant Plaintiff's motion to extend parts B and C of the amended complaint (dkt. no. 59). Also before the Court is Plaintiff's motion to reconsider the Court's order denying Plaintiff's previous motion for leave to amend. (Dkt. no. 39.) For the reasons stated below, the R&R is accepted and adopted in full and Plaintiff's motion to reconsider (dkt. no. 39) is consequently denied as moot. No objections to the R&R were filed.

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to

1 which objection is made.” 28 U.S.C. § 636(b)(1). Where a party fails to object, however,
2 the court is not required to conduct “any review at all . . . of any issue that is not the
3 subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth
4 Circuit has recognized that a district court is not required to review a magistrate judge’s
5 report and recommendation where no objections have been filed. See *United States v.*
6 *Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review
7 employed by the district court when reviewing a report and recommendation to which no
8 objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D.
9 Ariz. 2003) (reading the Ninth Circuit’s decision in *Reyna-Tapia* as adopting the view that
10 district courts are not required to review “any issue that is not the subject of an
11 objection.”).

12 Though no objection was filed in this case, the Court finds that it is appropriate to
13 conduct a *de novo* review. Plaintiff alleges that he is infected with human
14 immunodeficiency virus (HIV) and asserts that the treatment he receives in prison is
15 inadequate. The proposed amended complaint (“Amended Complaint”) removes claims
16 that were not allowed to proceed after initial screening, adds allegations with respect to
17 Dr. Robert Bannister, Medical Director of Nevada Department of Corrections (“NDOC”),
18 adds a request for compensatory and punitive damages, and adds a claim of negligence
19 against Dr. Bannister and James Cox, Director of NDOC. (See dkt. no. 57-1.) In their
20 opposition, Defendants argue that the negligence claim is an attempt to re-file Plaintiff’s
21 medical malpractice claim, which was dismissed at the initial screening. (See dkt. no. 63
22 at 2–3.) Defendants also argue that Plaintiff’s request for money damages is in bad faith.
23 (See *id.* at 3.)

24 The R&R agrees with Defendants that the negligence claim asserted against Dr.
25 Bannister is an attempt to circumvent the Court’s order dismissing Plaintiff’s medical
26 malpractice claim. However, the R&R also finds that Plaintiff should be able to assert a
27 negligence claim against Cox, as he is not a medical professional. The R&R further
28 states that Plaintiff’s money damages request is not in bad faith and that it will be up to

1 Plaintiff to prove the amount of damages at trial. Upon review of the filings and the
2 record, the Court agrees with the R&R.

3 Plaintiff's motion to attach exhibits from the original complaint to Amended
4 Complaint (dkt. no. 58) and Plaintiff's motion to extend parts B and C of Amended
5 Complaint (dkt. no. 59) are unopposed and merely seek to add exhibits from the initial
6 complaint and ensure that the portions of the Amended Complaint that were not written
7 on the standardized form are still incorporated. As the Amended Complaint is now being
8 approved by the Court, Plaintiff's motion asking the Court to reconsider its order denying
9 a previous motion for leave to amend (dkt. no. 39) is moot.

10 It is hereby ordered that the R&R (dkt. no. 68), is accepted and adopted in full.
11 Plaintiff's motion for leave to amend (dkt. no. 57) is granted in part and denied in part.
12 The negligence claim asserted in Count II of the proposed amended complaint against
13 Defendant Dr. Bannister (dkt. no. 57-1) is dismissed. Plaintiff's motion to attach exhibits
14 from the original complaint to Amended Complaint (dkt. no. 58) and Plaintiff's motion to
15 extend parts B and C of Amended Complaint (dkt. no. 59) are granted.

16 It is further ordered that Plaintiffs motion to reconsider (dkt. no. 39) is denied as
17 moot.

18 The clerk is ordered to file the Amended Complaint (dkt. no. 57-1) and attach the
19 exhibits from the initial complaint (dkt. nos. 1-7, 1-8, 1-9).

20 DATED THIS 25th day of November 2013.

21
22 

23 MIRANDA M. DU
24 UNITED STATES DISTRICT JUDGE
25
26
27
28